IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WRS, INC., d/b/a WRS MOTION PICTURE LABORATORIES, a corporation, Plaintiff, vs. PLAZA ENTERTAINMENT, INC., a corporation, ERIC PARKINSON, an individual, CHARLES von BERNUTH, an individual and JOHN HERKLOTZ, an individual, Defendants.	CIVIL ACTION No. 00-2041

RESPONSE TO MOTION FOR SUMMARY JUDGMENT OR, ALTERNATIVELY, MOTION FOR PARTIAL SUMMARY JUDGMENT

AND NOW comes WRS, Inc., Plaintiff in the above-captioned matter, (hereinafter referred to as "WRS") by and through its counsel, Thomas E. Reilly, P.C., and Thomas E. Reilly, Esquire, with the following to the Motion for Summary Judgment:

FACTS

I. Introduction

1. Admitted.

2. Admitted in part and denied in part. The averment contained in Paragraph 2 is admitted except that Herklotz was represented to WRS as the "Chief Executive Officer" of Plaza. Herzlotz was, therefore, an executive in addition to Parkinson and von Bernuth (Herklotz Answer Paragraph 8).

3. Admitted.

4. Admitted.

5. Denied. WRS disagrees with Paragraph 5. Rather, as a matter of law, Herklotz has not been discharged of its obligation as personal guarantor and produced in discovery reasonable proof of its damages.

II. The Breach of Contract Claims

6. Admitted.

7. Admitted.

8. Admitted.

9. Admitted in part and denied in part. WRS admits that it had performed work for Plaza, such that Plaza's account had an outstanding balance in April of 1998. Whether the work was a "significant amount of work" expresses an opinion, to which no response is required.

10. Admitted in part. By way of further Answer, Herklotz was aware that the order submitted for the production of "Giant of Thunder Mountain" was submitted to WRS by Plaza in order to fulfill a large order allegedly obtained by Plaza from Wal-Mart for "Giant of thunder Mountain" (Count V, Paragraph 2, Herklotz Cross Claims).

11. Admitted. In fact, Herklotz was told by Parkinson and von Bernuth that his Guaranty was necessary so that WRS would make the necessary copies to fulfill the order for "Giant of Thunder Mountain", a film produced by Herklotz (Count V, Herklotz Cross Claim, Paragraph 2).

12. Admitted in part and denied in part. WRS admits that Parkinson provided the Credit Application on July 24, 1998. However, Jack Purdy of WRS forwarded the Credit Application to Parkinson on May 6, 1998 contemporaneously with his forwarding to Herklotz the Guaranty ultimately signed by Herklotz. Herklotz understood that in

reliance of his Guaranty, WRS would commence production of the orders of "Giant of Thunder Mountain" as alleged in Count V, Paragraph 2 in Herklotz's Cross Claim (Count V, Herklotz's Cross Claim, Paragraph 2).

14. Admitted in part and denied in part. The statements in Paragraph 14 are admitted that as of August 31, 1998 WRS had a significant accounts receivable owed to it by Plaza and that the some debt preceded the date of Herklotz's Guaranty. However, Herklotz's Guaranty covered present and future debt, including that referred to in Paragraph 14.

15. Denied as stated. Rather, Parkinson was concerned about Plaza's inability to collect its own receivables resulting in its inability to pay its account to WRS. Plaza through Parkinson desired to have WRS continue to render video duplication services and fulfillment services to Plaza notwithstanding the delinquent account. Parkinson proposed that WRS take over its billing and collection as a means to reduce Plaza's cost of doing business. WRS agreed to assist Plaza in its administrative services provided that a portion of the funds collected was devoted to retiring the debt owed by Plaza to WRS as set forth in the Services Agreement. In reliance on that Services Agreement, WRS continued to provide duplication of fulfillment services to Plaza.

16. Denied as stated. The Services Agreement did not alter Herklotz's Guaranty commitment since modification of the relationship between WRS and Plaza was authorized and contemplated by the language of the document executed by Herklotz. Furthermore, the additional security interest, control over the receivable collection and the additional Guaranties provided by Parkinson and von Bernuth did not increase, but lessened, the risk undertaken by Herklotz in its May 6, 1998 Guaranty.

17. Admitted in part and denied in part. Paragraph 17 is admitted as stated. However, the implication that Plaza did not pay its obligation with respect to the Services Agreement is denied. Rather, payments were received from Plaza. However, Plaza at no time cured the delinquency as contemplated in the Services Agreement and ultimately WRS commenced this suit to collect the debt.

18. Denied as stated. Rather, Plaza, Parkinson and von Bernuth executed the Services Agreement. Thomas Gehring refused to execute the Services Agreement because it required the principals of Plaza, other than Herklotz, to become personally liable for the debt owed to WRS by Plaza. The Services Agreement did not negatively alter Herklotz's risk as alleged.

19. Admitted.

20. Admitted, in part. Denied in part. The change did not negatively alter Herklotz's risk and was a modification contemplated by the document executed by Herklotz.

21. Admitted in part and denied in part. It is admitted that a fee was to be paid to WRS. However, no fee was at any time actually paid. Furthermore, it since Parkinson proposed the arrangement to save the cost of his staffing and rent, WRS believes that the monthly fee paid to WRS was less than the administrative expenses incurred by Plaza in operating and forming its own administrative services, such that the change was not negative and did not negatively impact Herklotz. Furthermore, a modification of the relationship was contemplated by the document executed by Herklotz.

22. The statements made by Jack Napor as set forth in Paragraph 22 are admitted since they were his testimony at the deposition. However, as set forth in the

Affidavit of Jack Napor, the records kept in the ordinary course and daily course of the business of WRS account for invoices sent to Plaza; the orders submitted by Plaza; the amounts of each of those invoices; the amount paid on the account of Plaza; the outstanding balance on the account; and established amounts due on the dates and demonstrate the application of funds received from the lock box account were applied to the debt of Plaza. Furthermore, under the Account Application and terms and conditions incorporated therein, Plaza had 30 days within which to dispute any particular invoice after which Plaza would have no longer retain the right to dispute the invoice. Herklotz by executing the Guaranty, had rights no higher than Plaza. Therefore, the records kept in the ordinary course of WRS's business reasonably and accurately state the outstanding balance the Plaza account on the dates referred to.

23. Admitted.

24. Denied. WRS denies this statement. Rather, WRS performed the services required of it under the services agreement to the best extent that it could with the records provided by Plaza. Ultimately the, the receivables that Plaza claimed to be owed proved to be uncollectible. (Napor Depo, p. 123)

The remaining paragraphs are addressed by WRS's Brief in opposition to the Motion for Summary Judgment.

WHEREFORE, WRS, Inc. respectfully requests that the Court deny Jon Herklotz's Motion for Summary Judgment.

THOMAS E. REILLY, P.C.

BY:___/s/ Thomas E. Reilly____

Thomas E. Reilly, Esquire
Pa. I.D. #25832
2025 Greentree Road
Pittsburgh, PA 15220
(412) 341-1600

CERTIFICATE OF SERVICE

I, Thomas E. Reilly, Esquire, hereby certify that a true and correct copy of the Response to Motion for Summary Judgment or, Alternatively, Motion for Partial Summary Judgment was delivered via first-class mail, postage pre-paid on the 7th day of March, 2006 to the following:

John W. Gibson, Esquire
Greenfield Court
1035 Fifth Avenue
Pittsburgh, PA 15219

John P. Sieminski, Esquire
Burns, White & Hickton
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212

Vicki Hunt Mortimer, Esquire
Heintzman Warren
707 Grant Street
The Gulf Tower, 35th Floor
Pittsburgh, PA 15219

THOMAS E. REILLY, P.C.

BY: /s/ Thomas E. Reilly
Thomas E. Reilly, Esquire
Attorney for Plaintiff, WRS, Inc., d/b/a WRS Motion Picture Laboratories, a corporation